

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3322 OF 2005

IN

APPEAL (L) NO.987 OF 2005

IN

SUIT NO.2069 OF 1985

...

M/s.Kermani Transport Service ...Appellant

v/s.

The Surat Cotton Spinning &

Weaving Mills Pvt.Ltd. & anr. ...Respondents

...

Mr.M.A.Shah i/b Auroma Law for the Appellant.

None for the Respondents.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 31ST JULY, 2007

P.C. :

Heard the learned Counsel for the Appellant. The learned Counsel appearing for the Appellant states that the Respondents have been served. Affidavit of service has been filed. Respondents are not appearing. For the reasons disclosed in the affidavit filed in support of the motion, motion is granted in terms of prayer clause (a).

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

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P.C.:

By this Appeal, the Appellant challenges the order passed by the learned single Judge dated 12th August, 2005 passing decree in terms of prayer clauses (a) & (b) of the suit, because the Appellant/defendant did file written statement. The Appellant has explained the circumstances because of which he could not file written statement. He has also agreed to deposit an amount of Rs. 2 lakh in this court. It may be pointed out here that when the motion for condonation of delay came up before us, we directed the Appellant to give notice to the Respondents informing the Respondents that along with the motion the court may take even the appeal for final disposal. Notice has been served on the Respondents. Respondent are not appearing.

Taking overall view of the matter, in our opinion, following order would meet the ends of justice.

O R D E R

(i) In case the Appellant deposits an amount of Rs.2 lakh within a period of twelve weeks from today with due intimation to the Plaintiff, the decree passed against the Appellant by order dated 12th August, 2005 in Suit No.2069 of 1985 shall stand set aside.

(ii) In that event, the Appellant to file his written statement within one week of deposit of the amount. Written statement filed by the appellant as aforesaid will be accepted on record and thereafter the suit shall be placed before the appropriate court for further order.

(iii) The Appellant shall also pay to the Plaintiffs as and by way of costs of this Appeal Rs.10,000/-. Payment of costs also to be made within a period of twelve weeks from today.

(iv) On the amount being deposited, the Prothonotary & Sr.Master shall permit the Plaintiff No.1 to withdraw the amount on furnishing bank guarantee of a nationalised bank to the satisfaction of Prothonotary & Sr.Master of the court and the Plaintiff filing an undertaking in the court undertaking to bring back the amount, if so directed by the court and on such

terms and conditions as may be directed by the court. Further undertaking therein that in that event the rate of interest shall not be less than 12% p.a.

(v) In case the Plaintiff No.1 does not withdraw the amount by furnishing bank guarantee within the period of twelve weeks from the deposit, the amount be invested in fixed deposit in any nationalised bank during the pendency of the suit.

(vi) In case the Appellant fails to deposit the amount within the aforesaid period, the office shall treat this appeal as dismissed and in that event the Plaintiffs shall be free to execute the decree immediately.

(vii) Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

upk/-